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WM. R. STANLEY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

DOCKET No.

300

INDEPENDENT COAL AND COKE COMPANY AND CARBON
COUNTY LAND COMPANY, *Petitioners,*

v.

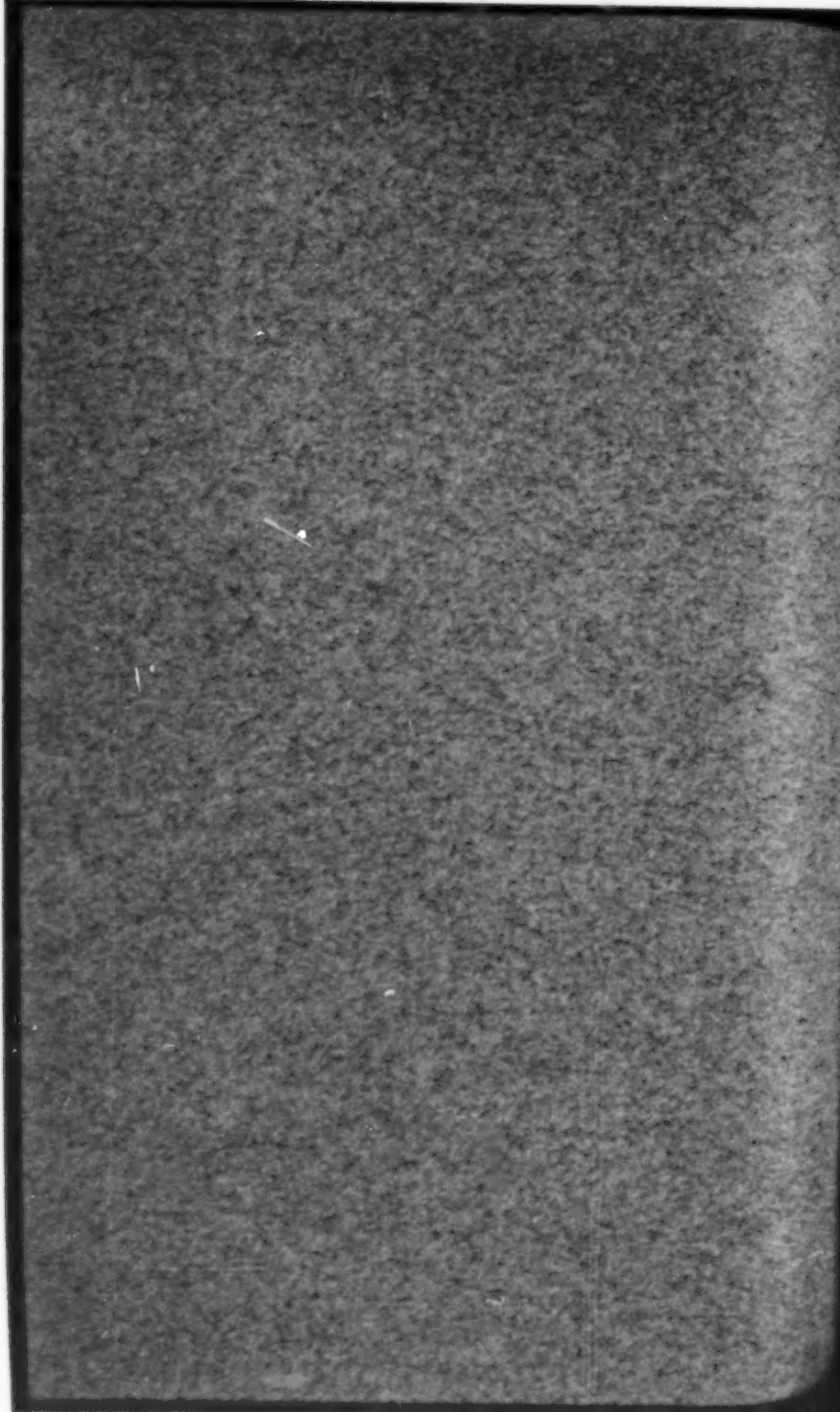
UNITED STATES OF AMERICA AND CARBON COUNTY,
Respondents.

MOTION OF STATE OF UTAH FOR LEAVE TO
APPEAR AS *AMICUS CURIAE* AND TO FILE
SUGGESTIONS IN SUPPORT OF PETITION
OF INDEPENDENT COAL AND COKE COM-
PANY AND CARBON COUNTY LAND COM-
PANY FOR WRIT OF CERTIORARI.

THE STATE OF UTAH:

HARVEY H. CLUFF,
Its Attorney General.

W. HALVERSON FARR,
Assistant Attorney General.



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INDEPENDENT COAL AND COKE COMPANY AND CARBON
COUNTY LAND COMPANY, *Petitioners,*

v.

UNITED STATES OF AMERICA AND CARBON COUNTY,
Respondents.

MOTION OF STATE OF UTAH FOR LEAVE TO
APPEAR AS *AMICUS CURIAE* AND TO FILE
SUGGESTIONS IN SUPPORT OF PETITION
OF INDEPENDENT COAL AND COKE COM-
PANY AND CARBON COUNTY LAND COM-
PANY FOR WRIT OF CERTIORARI.

To The Supreme Court of the United States:

The State of Utah moves the Court for leave to ap-
pear herein as *amicus curiae*, and to file the annexed
suggestions in support of the petition of Independent

Coal and Coke Company and Carbon County Land Company for a writ of certiorari.

THE STATE OF UTAH:

HARVEY H. CLUFF,
Its Attorney General.

W. HALVERSON FARR,
Assistant Attorney General.

SUGGESTION OF STATE OF UTAH AS *AMICUS CURIAE* IN SUPPORT OF PETITION OF INDEPENDENT COAL AND COKE COMPANY AND CARBON COUNTY LAND COMPANY FOR A WRIT OF CERTIORARI.

The State of Utah, although not a party to the suit, believes that its rights are vitally affected by this litigation. It accordingly supports the petition of the Independent Coal and Coke Company and of Carbon County Land Company for a writ of certiorari. If the writ is granted the State will later ask leave to file a brief as *amicus curiae*.

The State, conceiving that it had a good title, conveyed the lands in 1920 to the Carbon County Land Company for \$556,428. On January 2, 1920, that Company executed a mortgage to the State to secure the purchase price. (See appendix.) The mortgage was recorded in the proper county in 1920.

By deed of October 16, 1920, Carbon County Land Company conveyed part (1120 acres) of the lands to Independent Coal and Coke Company. (See appendix.) This last named company assumed and agreed in the deed to pay to the State \$112,000 of the mortgage in-

debtedness. On December 14, 1920, the State, through its Board of Land Commissioners, directed that the Independent Coal and Coke Company be advised that on the payment of this sum the State would release its mortgage to the 1120 acres. (See appendix.)

If a decree is finally entered in conformity with the opinion of the Court of Appeals the effect will be to pass the legal title to the United States, thus placing the State in the position of being a mortgagee of lands owned by the United States. The Government has indicated that the State's mortgage will form the subject of an original suit in this Court unless the State renounces its claim. The State believes that it acquired a good title to the lands and that its mortgage is valid. It will accordingly not renounce but stands ready to defend its rights. Because of the threatened attack in this Court by the Government on the State's title and mortgage, the State is interested in having the questions now involved reviewed by this Court.

THE STATE OF UTAH:

HARVEY H. CLUFF,
Its Attorney General.

W. HALVERSON FARR,
Assistant Attorney General.

APPENDIX.

MORTGAGE.

THIS INDENTURE, Made this 2nd day of January, A.D. One thousand Nine Hundred Twenty-by and between the Carbon County Land Company, a corporation, by A. C. Milner, President and E. Stanley Pratt, Secretary, of the County of Salt Lake and State of Utah, parties of the first part, and the State of Utah, party of the second part:

WITNESSETH, That the said parties of the first part in consideration of the sum of Five Hundred Fifty-six Thousand Four Hundred Twenty-eight (\$556,428.00) Dollars to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, by these presents, do grant, bargain, sell, convey and confirm, unto the said party of the second part, and to its successors and assigns forever, all of the following described tract of land, situate in the County of Carbon and State of Utah, to wit:

The North half of Section Twenty six (26); the Southeast Quarter and the Northwest Quarter of Section Twenty-two (22); the East Half of Section Twenty-seven (27); all of Section Thirty-four (34); the South Half of Section Thirty-five (35); all of Section Thirty-three (33), Township Twelve (12) South, Range Eleven (11) East, Salt Lake Meridian.

Also, all of Section One (1); all of Section Three (3); the North Half of Section Ten (10); the North Half of Section Eleven (11); the North Half and the Southeast Quarter of Section Twelve (12); the East Half of the Northeast Quarter of Section Fourteen (14); Township Thirteen (13) South, Range Ten (10) East, Salt Lake Meridian.

Also, Lot One (1), the Northeast Quarter of the

Northwest Quarter, the Northeast Quarter, the North Half of the Southeast Quarter, the Southeast Quarter of the Southeast Quarter, Section Seven (7), Lots One (1), Two (2), Three (3), the Southeast Quarter of the Southeast Quarter of Section (3), Township Thirteen (13) South, Range Eleven (11) East, Salt lake Meridian, containing in all 5564.28 acres.

To have and to hold the same with all appurtenances hereunto belonging, forever. And the said parties of the first part do hereby covenant and agree, that at the delivery hereof they are the lawful owners of the premises above granted, are seized of a good and indefeasible estate of inheritance therein free and clear of all encumbrances of whatsoever kind and character, and that they will warrant and defend the same in the quiet and peaceable possession of the said party of the second part, its successors and assigns, forever, against the lawful claims of all persons whomsoever.

Provided, always, and this instrument is made, executed and delivered upon the following conditions, to-wit:

First—Said party of the first part are justly indebted and promise to pay unto the party of the second part, the sum of Five Hundred Fifty-six Thousand Four Hundred Twenty-eight and No/100 (\$556,428.00) Dollars, lawful money of the United States of America, being the purchase price of the lands described herein and sold by the party of the second part to the party of the first part, according to the tenor of three principal notes, executed and delivered by the said parties of the first part, all bearing date January 2nd, 1920, and payable to the said party of the second part on the dates and in the sums, as follows: One note in the sum of \$100,000.00 payable on or before January 2nd, 1930, bearing interest at the rate of five per cent per annum from and after Jan-

uary 2nd, 1925, payable annually on the 2nd day of January of each year, and eight per cent per annum after maturity; One note in the sum of \$200,000.00 payable on or before January 2nd, 1940, bearing interest at the rate of five per cent per annum from and after January 2nd, 1925, payable annually on the 2nd day of January of each year, and eight per cent per annum after maturity; And one note in the sum of \$256,428.00 payable on or before the 2nd day of January, 1950, bearing interest at the rate of five per cent per annum from and after January 2nd, 1925, interest payable annually on the 2nd day of January of each year, and eight per cent per annum after maturity.

Second—The party of the second part hereby agrees that it will upon the payment of \$64,000.00 principal, at any time, release from this mortgage 640 acres of the land described herein, to be designated by the party of the first part, in compact form, and will likewise release additional 640 acre tracts upon payment of like additional amounts in the sum of \$64,000.00.

Third—Said parties of the first part hereby agree to pay all taxes and assessments levied upon the said premises when the same are due; and to pay to the party of the second part, or assigns, on demand, any money advanced by the party of the second part, or assigns, to remove, purchase or extinguish any prior or adverse or outstanding title, lien, claim or incumbrance on said premises or in any manner to protect its lien thereon; and if not so paid, the said party of the second part, or the legal holder or holders of this mortgage, may, without notice, declare the whole sum of money herein secured due and payable at once, and the mortgagees or assigns may pay such taxes and assessments, and the amounts so paid shall be a lien on the premises aforesaid, and to be secured by this mortgage, and collected in the

same manner as the principal debt hereby secured, with interest thereon at the rate of ten per cent per annum.

Fourth—Said parties of the first part hereby agree to keep all the buildings, fences and other improvements upon said premises in good repair and condition as the same are at this date, and abstain from the commission of waste on said premises until the notes hereby secured are fully paid.

Fifth—Said parties of the first part hereby agree that if the makers of said note shall fail to pay or cause to be paid any part of said money, either principal or interest, according to the tenor and effect of said notes when the same becomes due, or to conform to or comply with any of the foregoing conditions or agreements, the whole sum of money hereby secured shall at the option of the legal holder or holders thereof, become due and payable at once without notice to the makers hereof or their assigns. And in case suit is brought to foreclose this mortgage, the parties of the first part agree to pay a reasonable attorney's fee to be awarded by the court and included in the judgment.

The foregoing conditions being performed, this conveyance to be void; otherwise of full force and virtue.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto subscribed their names on the day and year first above mentioned.

CARBON COUNTY LAND COMPANY,

By A. C. MILNER,
President.

By E. STANLEY PRATT,
Secretary.

(Acknowledgment)

WARRANTY DEED.

CARBON COUNTY LAND COMPANY, GRANTOR, a corporation organized and existing under the laws of the State of Utah, hereby conveys and warrants to the INDEPENDENT COAL & COKE COMPANY, GRANTEE, a corporation organized and existing under the laws of the State of Wyoming, and doing business in the State of Utah, for a consideration of Five Hundred Thousand (500,000) shares of the capital stock of the grantee and its assumption of the debt hereinafter mentioned, the following described tracts of land situated in Carbon County, State of Utah, particularly described as follows, to-wit:

All of Section 3; the west one-half of Section 2; the north one-half of Section 10; the east one-half of the southeast quarter of Section 10; and the northwest quarter of Section 11; all in Township 13 South, Range 10 East, Salt Lake Meridian.

It is understood and agreed that of the aforesaid tracts of land all of Section 3, and the north half of Section 10, and the northwest quarter of Section 11, containing One Thousand, One Hundred and Twenty (1,120) acres are, with other lands not herein described, included in and covered by that certain mortgage dated January 2, A. D., 1920, in favor of the State of Utah, and recorded in the records of Carbon County, Utah, in Book "G" of mortgages at page 350, securing an indebtedness of Five Hundred and Fifty six Thousand, Four Hundred and Twenty-eight Dollars (\$556,428.00), which indebtedness stands against the lands described in said mortgage on the basis of One Hundred Dollars (\$100.00) per acre; One Hundred and

Twelve Thousand Dollars (\$112,000.00) of said indebtedness standing against the said 1,120 acres of land last above described.

AND it is further understood and agreed that the said 1,120 acres of land is granted by the grantor herein and accepted by the grantee herein subject to said mortgage indebtedness of \$112,000.00 which said mortgage indebtedness the grantee herein assumes and agrees to pay.

The grantor covenants and agrees that the State of Utah will release and discharge the said 1,120 acres of land from the operation of said mortgage upon the grantee herein paying the said indebtedness of \$112,000.00, together with such interest as may accrue thereon.

IN WITNESS WHEREOF, the said Carbon County Land Company has hereunto caused its corporate name to be signed and its corporate seal to be affixed, and the same to be attested by the signature of A. C. Milner, its president, and E. Stanley Pratt, its Secretary, thereunto duly authorized on this 16th day of October, A.D., 1920.

CARBON COUNTY LAND COMPANY,

By A. C. MILNER,
Its President.

By E. STANLEY PRATT,
Its Secretary.

(Acknowledgment)

CERTIFIED COPY OF MINUTES.

"A letter from Mr. A. C. Milner, transmitting a copy of a resolution adopted by the Independent Coal & Coke Company, relative to certain coal lands sold by the Board to the Carbon County Land Company, upon which the Board holds a mortgage, was read and considered. Said resolution recites that the Independent Coal & Coke Company has purchased the lands therein described and agrees to make payment to the State of Utah for the same in the sum of \$112,000.00. After consideration, on motion of Commissioner Ipson, seconded by Commissioner Stewart, the letter and resolution were ordered filed and the Secretary directed to advise that when the \$112,000.00 is paid, a release of the lands in question from the State's mortgage will be executed."

State of Utah, County of Salt Lake, ss:

I, John T. Oldroyd, State Land Commissioner of the State of Utah, hereby certify that the foregoing is a full, true and correct copy of an extract of the Minutes of the State Board of Land Commissioners, of a sitting had December 14th, 1920, as compared with Minute Book of the State Board of Land Commissioners of Utah, No. 15, page 789.

IN WITNESS WHEREOF I have hereunto set my hand and official seal of the said State Land Commissioner on this—day of January, 1924, at Salt Lake City, Utah.

JOHN T. OLDROYD,
State Land Commissioner.

